



Agenda Date: 12/19/01
Agenda Item: 3C

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

CABLE TELEVISION

I/M/O an Inquiry into the)
Operations of RCN of New Jersey)

ORDER DENYING MOTION FOR
A PROTECTIVE ORDER

BPU Docket No. CX01070460

(SERVICE LIST ATTACHED)

BY THE BOARD:

On September 26, 2001, the Board of Public Utilities (Board) ordered, inter alia, that RCN Telecom Services, Inc. (RCN) provide the OCTV with a detailed plan of its commitment to upgrade and/or rebuild the thirty-one municipalities it serves by October 5, 2001. The directive was contained within the Board's October 4, 2001 Order. On October 5, 2001, RCN filed a response which was deemed deficient by OCTV Staff. The plan failed to identify twenty-four of the thirty-one municipalities RCN serves and had committed to rebuild/upgrade. The plan named a few municipalities in passing without sufficient detail. On October 15, 2001, RCN was requested to submit a detailed response by October 22, 2001 in compliance with the Board's Order. On that date, RCN submitted a supplement to its October 5 filing which contained additional information on the rebuild/upgrade.

RCN prepared a schedule as part of its submission which described each phase of work in Hunterdon, Morris and Mercer counties, including municipalities in each phase, start and completion dates, estimates of the cost of construction, total miles of system plant, number of homes passed, projected subscribers and capital expenditures. RCN averred that because the schedule submitted with the filing (attached as Exhibit "A" to the Certification of Philip J. Passanante, corporate counsel of RCN) contained detailed information concerning its business plan, it should be deemed proprietary and maintained as confidential by the Board. Unredacted versions of the filing containing the proprietary information were filed directly with OCTV Staff for review.

RCN stated that the information had been produced solely for its internal use and was being provided to the Board and its Staff at the Board's direction. RCN also stated that the

information contained in the schedule was considered proprietary and confidential and had not been released to the public or to any other cable television regulatory body. RCN maintained that the Board is obligated to protect the confidentiality of a company's proprietary information from public disclosure.

According to RCN, the release of the information contained within the schedule would unduly harm RCN's legitimate business and competitive interests. In addition, RCN argued that other cable television operators have, or may reasonably be expected to, approach municipalities in which RCN provides cable television service and propose, or make an application to provide, services which compete with those of RCN. According to RCN, specific information as to the plan for the order of construction, projected costs and projected subscribers would, if available for public inspection, unduly harm RCN's competitive position and give potential competitors an unfair business advantage. RCN therefore requested that the Board afford the information contained within the schedule confidential treatment.

Upon careful review, the Board FINDS that RCN has not demonstrated that the schedule contains legitimate proprietary and confidential information worthy of protection from public disclosure. Good cause has not been shown by RCN that disclosure of the information contained within the schedule could harm its legitimate business and competitive interests and result in financial injury if it fell into the hands of competitors or potential competitors.

The arguments presented by RCN against disclosure of certain information do not contain merit. The Board also FINDS that confidential treatment should not be accorded to those elements of the schedule which have traditionally and historically been made public. Disclosure of this information would not divulge competitively valuable and proprietary information. It should be noted, that the Board's Order of October 4, 2001 specifically ordered RCN to file a detailed plan regarding the rebuild/upgrade. Copies would then be made available to the mayors of each municipality. RCN did not file a motion for reconsideration of the Board's October 4, 2001 Order within the timeframe required by law with respect to this directive. The Board FINDS that information regarding the number of subscribers, number of franchised municipalities and total plant miles are all items contained within the Board's Guide to Franchise Renewal. Confidential treatment should therefore not be accorded to the timetable for construction i.e., start to finish dates, number of subscribers and total plant miles. The Board believes that RCN has not made a sufficient showing as to why the information contained within the aforementioned items should not be released.

The Board believes that disclosure of the projected financial calculations contained in the columns titled: "Cap Ex", "Already Constructed", "Cap Ex to Complete", and "In Inventory" on page 1 of Exhibit "A" of the schedule would not harm RCN's competitive position and give potential competitors an unfair business advantage. RCN's argument for confidentiality is weak with respect to disclosure of its financial information since it has voluntarily divulged to the public and the Board its commitment to spend approximately \$75 million to upgrade and/ or rebuild the facilities in the thirty-one municipalities it serves. Therefore, disclosure of the actual dollars spent in each of the municipalities would not be harmful to RCN by giving an unfair advantage to competitors or potential competitors. In addition, non-disclosure of the financial information would infringe upon municipal review. As noted above, the Board's October 4, 2001 Order specifically ordered RCN to file a detailed plan which would then be made available to each municipality. The Board therefore FINDS that disclosure of the projected costs and calculations of construction would not be considered harmful to RCN if released to the general public or the operator's realized and potential competitors.

In summary and consistent with the reasoning detailed herein, the Board HEREBY DENIES the Motion for the Entry of a Protective Order. The information deemed non-confidential shall be made available in the Board's case files ten (10) days after receipt of the Board's Order.

DATED: December 19, 2001

BOARD OF PUBLIC UTILITIES
BY:

CONNIE O. HUGHES
PRESIDENT

(signed)

FREDERICK F. BUTLER
COMMISSIONER

(signed)

CAROL J. MURPHY
COMMISSIONER

ATTEST:

(signed)

HENRY M. OGDEN
ACTING SECRETARY

I/M/O RCN

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